SAPURA ENERGY BHD & ORS v. CIMB BANK BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
WAN MUHAMMAD AMIN WAN YAHYA J
[ORIGINATING SUMMONS NO: WA-24NCC-85-02-2024]
18 AUGUST 2025

Abstract – *The requirements for sanction under s. 366 of the Companies Act 2016 ('Act') are fully met when: (i) there are properly convened separate meetings for each company and creditor class in compliance with statutory requirements; (ii) there is fair representation; (iii) the proposed schemes are reasonable; and (iv) when there is a careful balance of the competing interests at stake. Such thorough and methodical approach reinforces the overall integrity of the schemes, and supports the conclusion that the restructuring has been pursued in good faith and in accordance with the objectives of the Act.*

COMPANY LAW: *Scheme of arrangement – Sanction and approval of court – Application for – Whether separate meetings properly convened in compliance with statutory requirements – Whether there was fair representation – Whether proposed schemes reasonable – Balancing of interests – Whether restructuring pursued in good faith – Whether requirements for sanction under s. 366 of Companies Act 2016 satisfied*

The first to 23rd applicants ('scheme companies') were companies within the Sapura Energy Bhd Group ('SEB Group'). The first applicant, Sapura Energy Bhd ('SEB'), was the holding company of the group and became a practice note 17 listed issuer due to financial distress. The 18th to 21st applicants were companies incorporated under the Labuan Companies Act 1990, whilst the 22nd and 23rd applicants were companies incorporated in Bermuda under the Bermuda Companies Act 1981. The remaining applicants were incorporated under the Companies Act 2016 ('CA 2016'). The scheme companies were financially distressed and made three applications to convene meetings of creditors in order to restructure their debts and rehabilitate themselves. Orders for the convening of creditors' meetings ('CCM order'), together with accompanying restraining orders, were made. In addition, in the course of the scheme proceedings, protective orders were obtained and remained in force up to the scheme meetings in February 2025 and were necessary to safeguard confidential and price-sensitive information, ensure compliance with Bursa Malaysia's listing requirements, and prevent any adverse impact on the trading price of SEB's shares. They also ensured the integrity of the restructuring process and preserved the stability of the applicants' market position, thereby maintaining stakeholder confidence. During this period, the Singapore High Court in HC/OA 626/2024

(concerning Sapura 1200 Ltd and related entities) invoked the 'Protocol on Court-to-Court Communication and Cooperation between Malaysia and Singapore in Cross Border Corporate Insolvency Matters' together with the companion Protocol on Admiralty and Shipping Matters. These protocols provide for communication and cooperation between the superior courts of Malaysia and the Supreme Court of Singapore in parallel proceedings. The invocation of the insolvency protocols was grounded on two primary considerations. First, this court's convening and restraining orders of 7 March 2024 (extended on 6 June 2024) had been recognised in Singapore under the UNCITRAL Model Law proceedings, and the Singapore court was asked to grant interim relief to prevent enforcement actions against Sapura 1200, including vessel arrest. Second, effective coordination and the exchange of information between both courts was necessary to manage the parallel proceedings in Malaysia and Singapore in a consistent manner, particularly in view of potential further recognition applications by other Sapura entities. The intended purpose of the protocols was to promote comity, efficiency, and consistency in the administration of cross-border insolvency proceedings, and to safeguard the integrity of the schemes from piecemeal enforcement action in either jurisdiction. Between 21 February 2025 to 27 February 2025, the applicants held separate scheme meetings for each class of scheme creditors of the respective applicants and presented the schemes for voting. Each of the 23 applicants' companies conducted their own scheme meetings with their respective creditors across four creditor classes. The schemes were approved by the requisite statutory majority in value of creditors present and voting at each of the scheme meetings. The schemes were inter-conditional, meaning, they were conditional upon other schemes taking effect, and all must be approved and sanctioned by this court for implementation. The first to 19th respondents were various banks and financial institutions, whilst the remaining respondents include commercial entities, all being creditors of one or more of the scheme companies. The scheme companies now applied for this court's sanction of the schemes under s. 366(4) of the CA 2016, with confirmation of foreign representatives and an interim stay pending the restructuring effective date ('encl. 299').

Held (granting application for sanction):

(1) Restraining orders have an expiration date thus any delay in determining the sanction application would leave the scheme companies exposed to proceedings from creditors, potentially defeating the purpose of the schemes. The opposed *ex parte* procedure was established and recognised. Further, this court has jurisdiction over foreign companies as they fall within the definition of 'company' under s. 365 of the CA 2016. The foreign companies also have 'sufficient connection' with Malaysia. The applicants had also sought declaration for two individuals to be foreign representatives for purposes of seeking recognition in

foreign jurisdictions. Such declarations obviate the need for further proof of appointment in foreign recognition applications and facilitates international effectiveness of the schemes. (paras 14-22)

(2) The scheme companies had properly convened separate meetings for each class of scheme creditors of the respective applicants pursuant to s. 366(1) of the CA 2016 and in accordance with the CCM order. All classes of creditors for each of the scheme companies approved the respective schemes with the statutory majority of more than 75%. The schemes were approved not only by the requisite statutory majority but by an overwhelming majority. The applicants had properly convened separate meetings for each company and creditor class in compliance with the statutory requirements, issued comprehensive explanatory statements and achieved the requisite statutory majority in value in every class. (paras 24, 29 & 67)

(3) The scheme companies had classified their creditors into four classes across all companies: (i) secured creditors; (ii) preferred unsecured creditors; (iii) unsecured creditors; and (iv) intercompany creditors. This classification was addressed and approved when the application was made to convene the meetings under the CCM order. No creditor opposed the classification at the hearing for the CCM order, and the four classes were maintained for the purpose of voting at the separate scheme meetings held for each of the 23 applicant companies. The applicants ensured fair representation through correct classification of creditors into four distinct classes, with no objection raised at the convening stage. (paras 30, 31, 32 & 67)

(4) The appellants had proposed schemes that were fair and reasonable, addressing the group's hopelessly intertwined financial affairs through a two-stage novation and pooling mechanism, and offering substantially better and faster returns than liquidation. The differentiated treatment of creditor classes was commercially justified and supported by overwhelming creditor approval. The applicants demonstrated that there was no blot or defect, with international effectiveness evidenced by multiple foreign recognitions, and conditions precedent that were standard, specific and within the court's control. (para 67)

(5) The restructuring structure, comprising novation to SEB, pooled settlement and a mix of cash, sustainable debt instruments, and SEB RCUIDS, represented a commercially sound solution that maximised recovery while ensuring orderly implementation. Safeguards, including the 'leave of court' provision in the interim stay order, preserved creditor rights while protecting the process from disruption. (para 67)

(6) The overwhelming approval of the schemes by statutory majorities across all creditor classes demonstrated broad stakeholder support for the restructuring. The excluded creditors' rights were protected through the 'leave of this court' provision, which allowed legitimate claims to be pursued under judicial supervision while preventing purely disruptive or tactical actions. The interim stay/restraining order was essential to protect the integrity of the restructuring process, ensuring that the benefits of the schemes were not undermined by adverse enforcement actions during the implementation period, and gave effect to the collective decision of the vast majority of creditors who voted in favour of the schemes. Thus, the interim stay order sought was both fair and just. It was necessary to preserve the integrity of the restructuring process, proportionate in its scope and duration, and consistent with the legislative intent behind s. 366 of the CA 2016. The order did not extinguish creditor rights but merely regulated their enforcement temporarily, subject to the supervision of this court. Granting this relief ensured that the collective will of creditors, as expressed through overwhelming support for the schemes, was not derailed by isolated enforcement actions, thereby promoting an orderly and equitable implementation of the restructuring. (paras 63-66)

(7) The applicants had complied with the requirements for sanction under s. 366 of the CA 2016. The applicants had not only complied with all applicable statutory and legal requirements, but had done so with a high degree of care, transparency and diligence. Their conduct throughout the process reflected a conscientious effort to consider and safeguard the interests of all creditors, both within and outside the schemes. The thorough and methodical approach adopted reinforced the overall fairness, reasonableness and integrity of the schemes, and supported the conclusion that the restructuring had been pursued in good faith and in accordance with the objectives of the CA 2016. (para 69)

Case(s) referred to:

AirAsia X Bhd v. BOC Aviation Ltd & Ors [2021] CLJU 188; [2021] 1 LNS 188 HC ***(refd)***

Bank Of Credit And Commerce International SA (No 3) [1993] BCLC 1490 ***(refd)***

BGMC Holdings Bhd v. Fulloop Sdn Bhd & Ors [2023] 2 CLJ 558 HC ***(refd)***

Francis Augustine Pereira v. Dataran Mantin Sdn Bhd & Ors And Other Appeals [2014] 1 CLJ 161 FC ***(refd)***

In Re Drax Holdings [2004] 1 WLR 1049 ***(refd)***

In The Matter Of A Proposed Arrangement By Mega Brands [2010] QCCS 1105 ***(refd)***

Mukhriz Mahathir v. Datuk Seri Mohd Najib Tun Hj Abdul Razak & Anor [2018] 6 CLJ 573 CA ***(refd)***

Pickwick International Inc (GB) Ltd v. Multiple Sound Distributors Ltd [1972] 3 All ER 384 ***(refd)***

Premier Oil Plc And Premier Oil UK Limited [2020] CSOH 39 ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Re Co-operative Bank Plc [2017] EWHC 2269 (Ch) ***(refd)***
Re Bluebrook Ltd [2010] 1 BCLC 338 ***(refd)***
Re Im Skaugen Se [2018] SGHC 259 ***(refd)***
Re Magyar Telecom BV [2015] 1 BCLC 418 ***(refd)***
Re Noble Group Ltd (No 1) [2019] 2 BCLC 505 ***(refd)***
Re Pacific Andes Resources Development Ltd [2016] SGHC 210 ***(refd)***
Re Telewest Communications plc (No 1) [2005] 1 BCLC 752 ***(refd)***
Re Telewest Communications plc (No 2) [2005] 1 BCLC 772 ***(refd)***
Re Winsway Enterprises Holdings Ltd [2017] 1 HKLRD 1 ***(refd)***
Sapura Energy Bhd & 22 Ors v. Enersafe Resources Sdn Bhd (WA-24NCC-121-03-2023 (Unreported) ***(refd)***
Sovereign Life Assurance Co v. Dodd [1892] 2 QB 573 ***(refd)***
Tan Kim Hock Product Centre Sdn Bhd & Anor v. Tan Kim Hock Tong Seng Food Industry Sdn Bhd [2018] 2 CLJ 567 FC ***(refd)***
Top Builders Capital Bhd & Ors v. Seng Long Construction & Engineering Sdn Bhd & Ors [2023] CLJU 449; [2023] 1 LNS 449 HC ***(refd)***
Transmile Group Bhd & Anor v. Malaysian Trustee Bhd & Ors [2012] 9 CLJ 1071 HC ***(refd)***

Legislation referred to:
Companies Act 2016, ss. 2(1), 116, 365, 366(1), (3), (4), 368, 369, 544, 545(3)
Rules of Court 2012, O. 42 r. 13

For the applicants - Gopal Sreenevasan, Azman Othman Luk, Jack Yow Pit Pin, Leong Phaik Leng, Kwong Chiew Ee, Neoh Jin Keat, Melvin Ng Yet Ting, Woon Yu Jian & Low Zhe Ning; M/s Rahmat Lim & Partners
For the 1st to 4th respondents - Eddie Chuah Seong Eng & Rachel Tey Mei Yee; M/s Wong & Partners
For the 15th respondent - Melanie Lim Sheng Ning; M/s Raja, Darryl & Loh
For the 18th respondent - Vincent Vijayan S Appadurai; M/s Vijayan & Co

Reported by Suhainah Wahiduddin

JUDGMENT

(Encl. 299 – Sanction)

Wan Muhammad Amin Wan Yahya J:

Introduction

[1] The first to 23rd applicants (or "the scheme companies") are companies within the Sapura Energy Berhad Group ("SEB Group"). The first applicant, Sapura Energy Berhad ("SEB"), is the holding company of the group and became a practice note listed issuer on 31 May 2022 due to financial distress.

[2] The SEB Group operates as a global integrated oil and gas services and solutions provider across the entire upstream value chain. The group operates under four business segments: Engineering & Construction, Operations & Maintenance, Drilling, and Exploration & Production.

[3] The 18th to 21st applicants are companies incorporated under the Labuan Companies Act 1990, whilst the 22nd and 23rd applicants are companies incorporated in Bermuda under the Bermuda Companies Act 1981. The remaining applicants are incorporated under the Companies Act 2016.

[4] The scheme companies are financially distressed and have made three applications to convene meetings of creditors in order to restructure their debts and rehabilitate themselves. The first application was by way of Originating Summons No. WA-24-NCC-148-03-2022, followed by Originating Summons No. WA-24NCC-121-03-2023, and finally the current proceedings.

[5] By orders dated 7 March 2024 and 6 June 2024, I made an order for the convening of creditors' meetings to be held by 11 March 2025 (the "CCM order"), together with accompanying restraining orders.

[6] In addition, in the course of the scheme proceedings, two protective orders were sought and obtained: the first on 4 June 2024 in respect of an applicants' affidavit (protected document) containing commercially sensitive and confidential information, and the second on 25 November 2024 in respect of a further applicants' affidavit (protected document). These protective orders remained in force up to the scheme meetings in February 2025 and were necessary to safeguard confidential and price-sensitive information, ensure compliance with Bursa Malaysia's listing requirements, and prevent any adverse impact on the trading price of SEB's shares. They also ensured the integrity of the restructuring process and preserved the stability of the applicants' market position, thereby maintaining stakeholder confidence.

[7] During this period, the Singapore High Court in HC/OA 626/2024 (concerning Sapura 1200 Ltd and related entities) invoked the "Protocol on Court-to-Court Communication and Cooperation between Malaysia and Singapore in Cross-Border Corporate Insolvency Matters" (adopted on 23 July 2021). Together with the companion Protocol on Admiralty and Shipping Matters signed on the same date, these protocols provide for communication and cooperation between the superior courts of Malaysia and the Supreme Court of Singapore in parallel proceedings.

[8] The invocation of the insolvency protocols in this case was grounded on two primary considerations. First, this court's convening and restraining orders of 7 March 2024 (extended on 6 June 2024) had been recognised in Singapore under the UNCITRAL model law proceedings, and the Singapore court was asked to grant interim relief to prevent enforcement actions against Sapura 1200, including vessel arrest. Second, effective coordination and the exchange of information between both courts was necessary to manage the

parallel proceedings in Malaysia and Singapore in a consistent manner, particularly in view of potential further recognition applications by other Sapura entities. Pursuant to the protocols, Justice Aedit Abdullah (as he was then known) (judge of the Singapore High Court) informed the parties that he would initiate court-to-court communication with this court to coordinate case management, share and ensure consistency with the draft Judicial Insolvency Network Admiralty Guidelines, and prevent disruption to the restructuring efforts. The intended purpose of the protocols was to promote comity, efficiency, and consistency in the administration of cross-border insolvency proceedings, and to safeguard the integrity of the schemes from piecemeal enforcement action in either jurisdiction.

[9] Between 21 February 2025 to 27 February 2025, the applicants held separate scheme meetings for each class of scheme creditors of the respective applicants and presented the schemes for voting. Each of the 23 applicant companies conducted their own scheme meetings with their respective creditors across four creditor classes.

[10] The schemes were approved by the requisite statutory majority in value of creditors present and voting at each of the scheme meetings. The schemes are inter-conditional, meaning they are conditional upon other schemes taking effect, and all must be approved and sanctioned by this court for implementation.

[11] The first to 19th respondents are various banks and financial institutions, whilst the remaining respondents include commercial entities, all being creditors of one or more of the scheme companies.

[12] The scheme companies now apply for this court's sanction of the schemes under s. 366(4) of the Companies Act 2016, with confirmation of foreign representatives and an interim stay pending the restructuring effective date ("encl. 299").

Procedural And Jurisdictional Issues

[13] As preliminary matters, I must consider:

(i) whether the sanction application may be heard on an opposed *ex parte* basis;

(ii) whether this court has jurisdiction over the foreign scheme companies; and

(iii) whether this court has jurisdiction to grant the post-restraining order and foreign representatives declaration sought.

A *Opposed Ex Parte Procedure*

[14] The applicants sought to have the sanction application heard on an opposed *ex parte* basis, meaning that respondents who have intervened in these proceedings may be present at the hearing and assist the court on points of law if invited. Section 366 of the Companies Act 2016 is silent on whether
B an application for sanction ought to be heard *ex parte* or *inter partes*.

[15] The test established in *Tan Kim Hock Product Centre Sdn Bhd & Anor v. Tan Kim Hock Tong Seng Food Industry Sdn Bhd* [2018] 2 CLJ 567; [2018] 2 MLJ 1 provides that where a statute does not expressly provide the
C procedure, the court should consider:

(i) the legislative purpose of the statutory provision and whether swift relief is needed; and

(ii) whether the court may review the grant of the *ex parte* order.

D **[16]** The current restraining orders will expire on 10 March 2025, and any delay in determining the sanction application would leave the scheme companies exposed to proceedings from creditors, potentially defeating the purpose of the schemes. The opposed *ex parte* procedure is established in *Pickwick International Inc (GB) Ltd v. Multiple Sound Distributors Ltd* [1972] 3 All ER 384 and recognised in *Mukhriz Mahathir v. Datuk Seri Mohd Najib*
E *Tun Hj Abdul Razak & Anor* [2018] 6 CLJ 573; [2018] 3 MLJ 715.

[17] Importantly, O. 42 r. 13 of the Rules of Court 2012 provides that any party affected by the sanction order may apply to set it aside within 30 days of receipt, ensuring that minority dissenting creditors' interests are protected.

F *Jurisdiction Over Foreign Companies*

[18] The 18th to 21st applicants are companies incorporated under the Labuan Companies Act 1990, whilst the 22nd and 23rd applicants are companies incorporated in Bermuda under the Bermuda Companies Act 1981. This court has jurisdiction over these foreign companies as they fall
G within the definition of "company" under s. 365 of the Companies Act 2016.

[19] Section 365 of the Companies Act 2016 defines "company" as "corporation or society liable to be wound up under the Act", which is wider than the general definition under s. 2(1). The Labuan companies are liable
H to be wound up under the Companies Act 2016, whilst the Bermudan companies are "unregistered companies" under ss. 544 and 545(3) and may be wound up under the Act.

[20] The foreign companies also have "sufficient connection" with Malaysia as established in *In Re Drax Holdings* [2004] 1 WLR 1049, *Re*
I *Magyar Telecom BV* [2015] 1 BCLC 418, and *Re Winsway Enterprises Holdings Ltd* [2017] 1 HKLRD 1. The sufficient connection criteria include:

(i) SEB as the Malaysian ultimate holding company;

(ii) management based in Malaysia; and

(iii) majority of creditors based in Malaysia.

Foreign Representatives Declaration

[21] The applicants also sought a declaration under prayer 8 that Chew Seng Heng (NRIC No: 661021-08-5233) and Ganesh a/l Gunaratnam (NRIC No: 770718-10-5313) are the foreign representatives duly appointed by the respective applicants for purposes of seeking recognition in foreign jurisdictions.

[22] Such declarations have been granted in similar circumstances in *Re Noble Group Ltd (No 1)* [2019] 2 BCLC 505, *Re Telewest Communications plc (No 1)* [2005] 1 BCLC 752 (involving Marconi Corporation plc), and *Re Im Skaugen Se* [2018] SGHC 259. The declaration obviates the need for further proof of appointment in foreign recognition applications and facilitates international effectiveness of the schemes.

The Test For Sanction

[23] The applicable test for the sanction of schemes of arrangement is the four-stage test established in *Re Noble* (*supra*), which was approved by the Malaysian High Court in *AirAsia X Bhd v. BOC Aviation Ltd & Ors* [2021] CLJU 188; [2021] 1 LNS 188; [2021] 10 MLJ 942. The test requires the court to consider:

(i) whether the provisions of the statute have been complied with;

(ii) whether the class was fairly represented by the meeting, and whether the majority was coercing the minority in order to promote interests which are adverse to the class that they purported to represent;

(iii) whether the scheme was a fair scheme which a creditor could reasonably approve; and

(iv) whether there is any "blot" or defect in the scheme.

Statutory Compliance

Section 366(1) – Convening Of Meetings

[24] The scheme meetings were convened virtually pursuant to the terms and within the timeframe of the CCM order. An examination of Appendix D against the CCM order demonstrates that the scheme companies have properly convened separate meetings for each class of scheme creditors of the respective applicants pursuant to s. 366(1) of the Companies Act 2016 and in accordance with the CCM order.

Section 369 – Explanatory Statement

[25] Section 369 of the Companies Act 2016 requires the issuance of an explanatory statement. The scheme companies issued not only a comprehensive explanatory statement providing a summary of the schemes, but also a detailed scheme paper setting out the particulars of the schemes due to their complexity, comprising seven volumes covering different aspects including the SOMV debt, sustainable debt instruments, and group intercompany agreement.

[26] The test for adequacy of an explanatory statement, as established in *Top Builders Capital Bhd & Ors v. Seng Long Construction & Engineering Sdn Bhd & Ors* [2023] CLJU 449; [2023] 1 LNS 449; [2022] 8 MLJ 604, is whether the explanatory statement contains sufficient information for scheme creditors to make a reasonable judgment on whether the proposed scheme is in their commercial interests.

[27] The explanatory statement and scheme paper contain all necessary information to enable creditors to exercise commercial judgment on a fully and properly informed basis, including:

(i) what the scheme creditors would receive from the schemes;

(ii) how and when they would receive them; and

(iii) whether there are other creditors preferred over the scheme creditors within the schemes.

Section 366(3) – Statutory Majority

[28] Section 366(3) of the Companies Act 2016 provides that a compromise or arrangement agreed by 75% in total value of creditors or class thereof present and voting shall be binding on all creditors, members, and the company.

[29] All classes of creditors for each of the scheme companies have approved the respective schemes with the statutory majority of more than 75%. The summary of the outcome of the scheme meetings is set out in Appendix E – summary of results. Importantly, the schemes were approved not only by the requisite statutory majority, but by an overwhelming majority.

Classes Fairly Represented

[30] The classification of creditors relates to a matter of jurisdiction. The scheme companies have classified their creditors into four classes across all companies:

(i) secured creditors (only in the case of Sapura TMC);

(ii) preferred unsecured creditors;

(iii) unsecured creditors; and

(iv) intercompany creditors.

[31] This classification was addressed and approved when the application was made to convene the meetings under the CCM order. The classification satisfies the classic test in *Sovereign Life Assurance Co v. Dodd* [1892] 2 QB 573, being that all creditors whose "rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest".

[32] No creditor opposed the classification at the hearing for the CCM order, and the four classes were maintained for the purpose of voting at the separate scheme meetings held for each of the 23 applicant companies.

Fair And Reasonable

[33] The starting point to consider whether a scheme is fair and reasonable is that this is a matter largely for the commercial judgment of the creditors, as established in *Re Telewest Communications plc (No 2)* [2005] 1 BCLC 772 and *Transmile Group Bhd & Anor v. Malaysian Trustee Bhd & Ors* [2012] 9 CLJ 1071.

[34] In *BGMC Holdings Bhd v. Fulloop Sdn Bhd & Ors* [2023] 2 CLJ 558; [2023] 9 MLJ 465, I observed that the court should generally defer to the commercial judgment of the scheme creditors in deciding whether to approve a proposed scheme. It is not the function of the court to undertake a detailed comparison of the merits of the scheme against other possible arrangements or to substitute its own commercial judgment for that of the creditors.

[35] I further stated in *BGMC Holdings* (*supra*) that the applicable standard is the "reasonable businessman test", namely whether the scheme is one which an intelligent and honest person, being a member of the class concerned and acting in his or her own interest, might reasonably approve.

The Scheme Mechanism

[36] The schemes operate through a sophisticated pooling and consolidation mechanism designed to address the hopelessly intertwined financial affairs of the SEB Group. The key features of this mechanism are:

(i) debt novation: all outstanding liabilities of the second to 23rd applicants are novated to SEB (the holding company) through a two-stage process, with waiver of penalty charges, late payment charges and interest from the cut-off date to the restructuring effective date;

(ii) pooling of resources: All assets and resources of the 23 scheme companies are pooled together under SEB;

(iii) debt consolidation: Following novation, all compromised debts are settled through the SEB scheme as a single settlement point; and

(iv) inter-conditional implementation: The schemes are inter-conditional, requiring all to be sanctioned for any to take effect.

Treatment Of Different Creditor Classes

[37] The schemes address four broad classes of creditors with differentiated treatment reflecting their respective positions:

(i) preferred unsecured creditors and unsecured creditors:

(a) these creditors receive returns under the schemes through cash and/or other instruments. Structurally, their debts are novated to SEB who then undertakes the obligation for their compromise. Under the schemes, preferred unsecured creditors receive a return of 100% whilst unsecured creditors receive 93% of their respective claims;

(ii) secured creditors:

(b) only Sapura TMC (the second applicant) has secured creditors, being the MCF Financiers, who are already voting as unsecured creditors in the SEB scheme. Upon the restructuring effective date, those debts are novated to SEB and compromised as if they were unsecured creditors; and

(iii) intercompany creditors:

(c) these are creditors within the SEB Group whose debts (after netting off against outstanding receivables of other intercompany debtors) are novated to SEB. The remaining uutstanding liabilities owing by SEB to these intercompany creditors are then irrevocably and permanently waived. The remaining outstanding receivables from the intercompany creditors are also irrevocably and permanently waived and treated as a deemed capital contribution from SEB.

Settlement Instruments And Timeline

[38] The settlement structure provides for multiple instruments to maximise creditor recovery:

(i) cash payments from SOMV proceeds (20.22 sen to 100 sen by 31 March 2026);

(ii) sustainable debt instruments providing 46.98 sen to 100 sen over eight years with interest/profit payable at 4.5% per annum; and

(iii) SEB RCUIDS (redeemable convertible unsecured Islamic debt securities).

[39] For creditors of Sapura 3500 Ltd and Sapura 1200 Ltd, whilst they receive the same rate of return in the schemes and in liquidation, they receive payment within 90 days of the restructuring effective date compared to three to five years in liquidation, demonstrating the "faster return" principle from *Re Noble Group Ltd.*

Comparison With Liquidation Alternative

[40] The relevant alternative if the schemes are not sanctioned would be liquidation. The evidence demonstrates that recovery for scheme creditors in a liquidation scenario would be significantly lower compared to recovery through the schemes. For most scheme companies, estimated liquidation recoveries range from 0% to 68.47%, compared to 93%-100% under the schemes.

[41] As established in *Re Noble* (*supra*), "to have any prospect of being sanctioned at all, a scheme must offer all creditors a prospect of receiving a larger or faster return on their debts than they would receive in a winding up".

[42] The schemes clearly satisfy this requirement.

Pooling Mechanism Justification

[43] The pooling mechanism is justified by the hopelessly intertwined nature of the SEB Group's financial affairs. This approach has been accepted in other jurisdictions, as demonstrated in *Bank of Credit and Commerce International SA (No 3)* [1993] BCLC 1490, where the English Court of Appeal approved an arrangement to pool assets of companies whose financial affairs were hopelessly intertwined.

[44] The pooling mechanism was specifically considered and approved in *Sapura Energy Bhd & 22 Ors v. Enersafe Resources Sdn Bhd* (WA-24NCC-121-03-2023 (Unreported, 22 September 2023)), where Justice Atan Mustaffa adopted a commercially pragmatic approach and found that pooling of resources serves the overarching aim of the proposed schemes and promises enhanced returns for creditors compared to liquidation.

Excluded Creditors

[45] Certain creditors are excluded from the schemes for commercial reasons, including trade and working capital facilities' financiers, critical service providers, SUMUD vendors, small creditors below RM200,000, contingent creditors, and disputed claims. Such exclusions are not unusual and are permissible as established in *Francis Augustine Pereira v. Dataran Mantin Sdn Bhd & Ors And Other Appeals* [2014] 1 CLJ 161; [2014] 6 MLJ 56 and *Re Bluebrook Ltd* [2010] 1 BCLC 338. In *Re Bluebrook* (*supra*) the English High Court held as follows:

A [24] *A company is free to select the creditors with whom it wishes to enter into an arrangement and need not include creditors whose rights are not altered by the scheme.* This appears from *Sea Assets Ltd v. PT Garuda Indonesia* [2001] EWCA Civ 1696 and *Re British & Commonwealth Holdings plc (No 3)* [1992] BCLC 322, [1992] 1 WLR 672. *Prima facie*, therefore, *the company is entitled to select the senior lenders as being those with whom it wishes to enter into a scheme and not enter* B *into a scheme with the mezzanine lenders as well.* Of course, whether that scheme can ultimately be effected, or will be sanctioned, is another matter. At this stage the question is one of choice of counterparty.

(emphasis added)

No "BLOT"

C **[46]** A "blot" refers to some technical or legal defect in the scheme which renders it inoperable, as defined in *Re Co-operative Bank plc* [2017] EWHC 2269 (Ch).

International Effectiveness

D **[47]** The schemes seek to compromise the rights of scheme creditors in multiple jurisdictions. This requires consideration of whether the schemes, if sanctioned, would be recognised as having compromised the creditor's rights in those jurisdictions. The applicants have provided evidence of foreign court recognition orders and judgments from various jurisdictions E including Ghana, Congo, Singapore, Angola, Brazil and South Africa, demonstrating international effectiveness.

Conditions Precedent

[48] The schemes are subject to conditions precedent set out in para. 17.2 F of the scheme paper, primarily concerning:

(i) regulatory or governmental approvals (*eg*, Bursa Malaysia, Securities Commission Malaysia, Minister of Finance, Malaysia);

(ii) shareholder approvals;

G (iii) court approvals, including share capital reductions under s. 116 of the Companies Act 2016; and

(iv) execution of requisite financing and security documents and trust deeds.

[49] In *Premier Oil Plc And Premier Oil UK Limited* [2020] CSOH 39, the H court observed that conditionality does not in itself constitute a "blot" on a scheme, particularly when complex schemes are expected to have different elements which are inter-conditional.

[50] Each condition precedent is specifically identified with legal certainty as to what will follow. There is no excessive conditionality that would I remove the court's control, and the conditions are standard regulatory or procedural requirements typical of large-scale debt restructuring without enabling any external veto or alteration of the schemes beyond these prescribed matters.

Interim Order – Stay

[51] The applicants also sought an interim stay order in prayer 9 of the notice of application (encl. 299) that no action or proceedings may be commenced or continued against any of the applicants by any party within the jurisdiction of this court, whether the act takes place in Malaysia or elsewhere, from the date of this order until the restructuring effective date or the longstop date (as defined in the schemes), whichever is earlier, unless with the leave of this court.

Necessity And Urgency Of The Relief

[52] The current restraining orders granted under the CCM order will expire on 10 March 2025. This creates a critical timing gap between the expiry of existing protection and the restructuring effective date, during which the scheme companies would be vulnerable to disruptive legal actions. The standstill period under the schemes applies only to scheme creditors, creating a significant protection gap for claims by non-scheme creditors.

[53] Non-scheme creditors include creditors with claims accruing after the cut-off date, creditors whose claims are being contested completely by the relevant applicants, contingent creditors, and other excluded parties as set out in Appendix 4 of the explanatory statement. These parties are not bound by the scheme's standstill period and could potentially commence enforcement actions that would jeopardise the entire restructuring.

[54] Without such protective relief, there is a substantial risk that some parties may take adverse enforcement actions against the applicants during the critical implementation period. Such actions could include asset seizures, winding-up petitions, enforcement of security, or other aggressive recovery measures that might undermine the restructuring process and prevent the schemes from achieving their intended purpose of rehabilitating the scheme companies.

Legal Basis And Jurisdictional Foundation

[55] This court has the power and jurisdiction to grant such relief by virtue of multiple legal foundations:

(i) inherent jurisdiction: the court's inherent powers to prevent abuse of process and protect the integrity of its own proceedings, particularly where schemes have been sanctioned following proper statutory procedures and overwhelming creditor approval;

(ii) section 366(4) of the Companies Act 2016: The permissive language of this provision allows the court to make such orders as it deems fit in connection with scheme sanctions; and

(iii) judicial precedent: similar orders have been recognised as appropriate in comparable jurisdictions and circumstances.

[56] I have also considered the issue that the provisions of ss. 366 and 368 of the Companies Act 2016 do not expressly provide for a restraining order or an interim stay of the nature sought by the applicants. However, I note the applicants' reliance on the dissenting judgment of the Federal Court in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145, wherein Justice Wan Yahya FCJ held:

> I cannot find any provision in the Courts of Judicature Act 1964, the Rules of the High Court 1980 or the Act expressly or impliedly prohibiting the High Court from granting any relief as provided for in the Act when quashing an Award of the Industrial Court. The court cannot override an express provision of the law, **but if there is no express provision in the statute, then the court can exercise its powers in a suitable case.** This is precisely the approach taken by the Federal Court in *Zainal Abidin v. Century Hotel* [1982] 1 MLJ 260, where it relied upon para 6 of the Schedule to found the *Mareva* jurisdiction. (emphasis added)

[57] Applying this principle, in the absence of any express prohibition in ss. 366 or 368 against granting a post-sanction restraining order permits this court, in a suitable case, to exercise its inherent powers to make such an order or similar orders.

Comparison With Other Jurisdictions

[58] The appropriateness of post-sanction restraining orders has been recognised in other jurisdictions. In *Re Pacific Andes Resources Development Ltd* [2016] SGHC 210, the Singapore High Court observed in *obiter* at para. 28:

> ... However, I would venture to say that the point may go even further. *Where the scheme is presented for sanction following a successful vote* at a scheme meeting, *an argument is certainly there for the exercise of equitable jurisdiction to restrain proceedings elsewhere so as to ensure observance with the scheme that has been presented for sanction.* At that stage, a statutory compromise has been reached by the creditors, subject to court sanction, using statutory cram down powers. *In such a scenario, I do not see why the court should not protect the integrity of the vote so as not to undermine the application for sanction before it.* However, I offer this only as a preliminary view as I have not heard full arguments on this issue. (emphasis added)

[59] Similarly, in *In The Matter Of A Proposed Arrangement By Mega Brands* [2010] QCCS 1105, the Quebec Superior Court granted a stay of proceedings on a limited basis to allow the applicants to implement the terms of the scheme approved under the Canada Business Corporations Act, recognising that implementation periods require protection from adverse actions.

Scope And Proportionality

[60] The interim stay sought is limited in scope and duration:

(i) limited duration: The order operates only until the restructuring effective date or the longstop date, whichever is earlier, ensuring it does not provide indefinite protection;

(ii) jurisdictional scope: while the order applies to acts taking place in Malaysia or elsewhere, it only restrains parties within this court's jurisdiction, respecting principles of international comity;

(iii) court oversight: the provision "unless with the leave of this court" ensures that legitimate claims or urgent matters can still be pursued with judicial supervision; and

(iv) targeted protection: the order specifically protects the restructuring process rather than providing blanket immunity from all legal obligations.

Policy Considerations And Legislative Intent

[61] The grant of this relief serves important policy objectives underlying Malaysia's scheme of arrangement regime:

(i) facilitating corporate rescue: the order supports the primary legislative intent of s. 366, which is to allow struggling companies to restructure and continue as going concerns rather than face value-destructive liquidation;

(ii) protecting creditor democracy: having achieved overwhelming creditor approval across all classes, the order ensures that the collective will of creditors is not frustrated by individual actions of non-participants;

(iii) preventing value destruction: disruptive enforcement actions during implementation could destroy the enhanced recovery that the schemes provide to all stakeholders compared to liquidation alternatives; and

(iv) supporting cross-border recognition: the order facilitates international effectiveness by providing stability during the period when foreign court recognition applications are being pursued.

[62] If there were any delay in determining the sanction application, the scheme companies would be left exposed to proceedings from creditors, which may defeat the entire purpose of the schemes and undermine the legislative intent of preventing "a minority in a class frustrating a beneficial scheme" as recognised in *AirAsia X Bhd* (*supra*).

Balancing Of Interests

[63] I have carefully balanced the competing interests at stake. The overwhelming approval of the schemes by statutory majorities across all creditor classes demonstrates broad stakeholder support for the restructuring. The excluded creditors' rights are protected through the "leave of this court" provision, which allows legitimate claims to be pursued under judicial supervision while preventing purely disruptive or tactical actions.

[64] The interim stay/restraining order is essential to protect the integrity of the restructuring process, ensure that the benefits of the schemes are not undermined by adverse enforcement actions during the implementation period, and give effect to the collective decision of the vast majority of creditors who voted in favour of the schemes.

[65] In light of the above, I am satisfied that the interim stay order sought is both fair and just. It is necessary to preserve the integrity of the restructuring process, proportionate in its scope and duration, and consistent with the legislative intent behind s. 366 of the Companies Act 2016. For the reasons outlined, I am further satisfied that:

(i) this court has the jurisdiction to grant the stay sought;

(ii) the stay is necessary to achieve the legislative purpose of s. 366;

(iii) the stay would not cause undue prejudice to creditors, as adequate safeguards are in place; and

(iv) the inclusion of the phrase "unless with leave of this court" in prayer 9 ensures that creditors retain the ability to seek redress in appropriate cases under judicial supervision.

[66] The order does not extinguish creditors' rights but merely regulates their enforcement temporarily, subject to the supervision of this court. Granting this relief ensures that the collective will of creditors, as expressed through overwhelming support for the schemes, is not derailed by isolated enforcement actions, thereby promoting an orderly and equitable implementation of the restructuring.

Conclusion

[67] Having considered all the evidence and submissions, I am satisfied that the requirements for sanction under s. 366 of the Companies Act 2016 are fully met. The applicants have:

(i) properly convened separate meetings for each company and creditor class in compliance with statutory requirements, issued comprehensive explanatory statements, and achieved the requisite statutory majority in value in every class;

(ii) ensured fair representation through correct classification of creditors into four distinct classes, with no objection raised at the convening stage;

(iii) proposed schemes that are fair and reasonable, addressing the group's hopelessly intertwined financial affairs through a two-stage novation and pooling mechanism, and offering substantially better and faster returns than liquidation. The differentiated treatment of creditor classes is commercially justified and supported by overwhelming creditor approval; and

(iv) demonstrated that there is no blot or defect, with international effectiveness evidenced by multiple foreign recognitions, and conditions precedent that are standard, specific, and within the court's control.

[68] The restructuring structure, comprising novation to SEB, pooled settlement, and a mix of cash, sustainable debt instruments, and SEB RCUIDS, represents a commercially sound solution that maximises recovery while ensuring orderly implementation. Safeguards, including the "leave of court" provision in the interim stay order, preserve creditor rights while protecting the process from disruption.

[69] Based on the above, I am satisfied that the applicants have not only complied with all applicable statutory and legal requirements, but have done so with a high degree of care, transparency, and diligence. Their conduct throughout the process reflects a conscientious effort to consider and safeguard the interests of all creditors, both within and outside the schemes. The thorough and methodical approach adopted reinforces the overall fairness, reasonableness, and integrity of the schemes, and supports the conclusion that the restructuring has been pursued in good faith and in accordance with the objectives of the Companies Act 2016.

[70] For the foregoing reasons, I granted this application for sanction in encl. 299, together with the interim stay order.